APPEAL NO. 010018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 6, 2000. There were five quarters of supplemental income benefits (SIBs) in issue, and the hearing officer found that the appellant (claimant) was not entitled to SIBs for any of the quarters because she failed to search for employment commensurate with her ability to work.

The claimant appeals, arguing that the hearing officer's decision that she did not have the complete inability to work was an abuse of discretion, and that the hearing officer should have been able to ascertain her inability from all of the medical reports in issue. The respondent (carrier) responds that the hearing officer properly applied the applicable rules to the facts.

DECISION

We affirm the hearing officer's decision.

The claimant injured her left shoulder and wrist on _____. She had two wrist surgeries in late 1997, and shoulder surgery in December 1997 and again in either January 1999 or January 2000 (conflicting evidence was presented on this point). The qualifying periods under review ran from early February 1999 through early May 2000. Some doctor's reports submitted by the claimant essentially declare her to be off work or "on disability." At one point, Dr. B noted that the claimant was on disability due to intractable pain and reduced range of motion. There were some records, somewhat remote in time to the period under consideration, which indicated some ability to work. However, the claimant's surgeon, Dr. S, released the claimant to modified duty effective June 14, 1999, with some restrictions. The claimant asserted that if the carrier could show her where she could do light duty that would not involve lifting, she would go back to work. The claimant also referred several times to records at home that would prove various aspects of her case but which were not put into evidence. A June 27, 2000, report, apparently from the independent medical examination doctor, Dr. D, is not in the exhibits admitted into evidence in this case, although it is referred to by both parties. (Possibly this was part of a subsequent quarter not in issue in this CCH.)

The hearing officer did not err, and certainly did not abuse his discretion, in holding that the claimant did not meet the good faith job search requirement. The legislature has required that a search for employment must be done that is commensurate with the ability to work. The burden is on the claimant to search and not on the carrier to find work for the claimant. As SIBs is restricted to persons who have equal to or greater than 15% impairment rating, it is more likely than not that such persons will have residual pain and limitations or restrictions. The hearing officer recited the applicable administrative rule as Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). It is clear that the Texas Workers' Compensation Commission intended that a determination of the

total inability to work would no longer be supported by a fact finder cobbling together a work status from an assortment of records, but that there must be an express narrative, going beyond simply "off work" declarations, that describes how no work of any kind (not just the work done at the time of the injury) is possible because of the injury.

While the claimant persuasively argues that the records showing that she had some ability to work (generated in October 1997 and March 1998) were too remote in time to the periods under consideration, the decision may be affirmed because the evidence submitted by the claimant did not, in the first instance, constitute a "narrative report from a doctor which specifically explains how the injury causes a total inability to work." In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCUR IN RESULT:

Elaine M. Chaney
Appeals Judge